

## AMENDMENT / CORRECTION

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JUL 21 2016 Page 2

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District OF MARYLAND-BALTIMORE NORTH DIV	
Name (under which you were convicted): SOLOTHAL THOMAS		Docket or Case No.: 1:04-CR-00232-CCB-1	
Place of Confinement: USP BIG SANDY INEZ, KY		Prisoner No.: 41347-037	
UNITED STATES OF AMERICA		Movant (include name under which convicted) v. SOLOTHAL THOMAS	

## MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

~~UNITED STATES DISTRICT COURT~~ UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND (BALTIMORE NORTH DIVISION)

(b) Criminal docket or case number (if you know): 1:04-CR-00232-CCB-1

2. (a) Date of the judgment of conviction (if you know): October 27, 2006

(b) Date of sentencing: 10/27/06

3. Length of sentence: 240 MONTHS FOR COUNT 4 / COUNT 5 120 MONTHS
- 
- LIFE FOR COUNTS 2, 3, 6 ALL RAN CONCURRENT / RAN CONSECUTIVE

4. Nature of crime (all counts): 21 846.841(b)(1)(A) § 18:2; 21 846.841(b)(1)(A); 18:1958
- 
- (a) § 18:2; 18:1958 (a) § 18:2; 18:924(N) § 18:2; 18:924(O) § 18:2; 18:2; 18:
- 
- 924(C) § 18:2 18:924(i) § 18:2; § 18:924(J) § 18:2

5. (a) What was your plea? (Check one)

(1) Not guilty ☒(2) Guilty ☐(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

N/A

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☒Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☐No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒No ☐

9. If you did appeal, answer the following: Fourth Circuit Court of Appeals
- (a) Name of court: ~~UNITED STATES DISTRICT COURT FOR MARYLAND~~
- (b) Docket or case number (if you know): 06-51355 13-6378 (JOINT)
- (c) Result: ~~REVERSED~~ CONVICTIONS/Sentence Affirmed
- (d) Date of result (if you know): JUNE 19, 2008
- (e) Citation to the case (if you know): MANDATE
- (f) Grounds raised: DISTRICT COURT ERRED IN JURY INSTRUCTIONS. DISTRICT COURT ERRED OVER BRUTON objection to allow STATEMENT INTO TRIAL WITH OUT NO CURE; DISTRICT COURT ERRED by INFRINGING 6th AMENDMENT SIXTH AMENDMENT RIGHT to WAIVE COUNSEL. DISTRICT COURT ERRED IN Failing To dismiss INDICTMENT; Appellant was denied to be Present for JURY Selection

(g) Did you file a petition for certiorari in the United States Supreme Court?

Yes



No



If "Yes," answer the following:

(1) Docket or case number (if you know): 08-6191

(2) Result: DENIED

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

(5) Grounds raised: SAME AS FOURTH CIRCUIT COURT OF APPEAL.

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: DISTRICT COURT OF MARYLAND (Baltimore Division) NORTHERN

(2) Docket or case number (if you know): CIVIL SECTION 2255

(3) Date of filing (if you know): September 2009

(4) Nature of the proceeding: Civil

(5) Grounds raised: INEFFECTIVE ASSISTANCE; COURT ERRORS SENTENCE ERRORS. SIXTH AMENDMENT RIGHTS VIOLATED

INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL. COUNSEL Failed to  
Call PARTICULAR WITNESS TO TESTIFY ON THOMAS Behalf. Failed  
AO 243 (Rev. 01/15)

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To RAISE MERTORIOUS OBSection, Failed to Object to the Prosecutorial  
Misconduct which occurred during the Government closing Arguments.. Prosecu-  
tor's closing Arguments INCLUDED Several UNWARRANTED and Improper Attacks ON  
Defense Counsel.. COUNSEL Failed to Object to the INTRODUCTION of Prior  
Bad Acts Evidence.. COUNSEL Failed to RAISE AN ISSUE REGARDING THOMAS  
Right to Self-Representation

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: DENIED

(8) Date of result (if you know): JANUARY 28, 2013

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: FOURTH CIRCUIT COURT OF APPEALS

(2) Docket of case number (if you know): CIVIL

(3) Date of filing (if you know): MARCH 2013

(4) Nature of the proceeding: CERTIFICATE OF APPEALABILITY

(5) Grounds raised:

COA: ISSUES CONCERNING THE DENIAL  
OF SECTION 2255

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: DENIED

(8) Date of result (if you know): JUNE 26, 2013

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

N/A

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: AND WELCH (2016)

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

APPELLANT AVERS AND ASSERTS HIS SENTENCE IS IN the  
EXCESS MAXIMUM AUTHORIZED AND PROSCRIBED ACCORDING to  
JOHNSON (2015) & WELCH (2016) WHICH IS IN VIOLATION OF  
FUNDAMENTAL DUE PROCESS OF the CONSTITUTION. JOHNSON IS  
RETROACTIVELY APPLICABLE to APPELLANT: SEE MEMORANDUM &  
BRIEF FILED to the FOURTH (CIR) COURT OF APPEALS (Attached  
with Exhibits and Attachments)

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

2015 Readily <sup>NOR</sup> Ripe  
THIS AVENUE WAS NOT AVAILABLE (NOR) WAS JOHNSON

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

N/A

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐No ☐N/A

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐No ☐N/A

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐No ☐N/A

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

N/A

Docket or case number (if you know):

N/A

Date of the court's decision:

N/A

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: Johnson (2015) (NOR) Welch (2016) was available to Appellant. Now the increased applications and provision of the career guide lines effect Appellant substantially? Procedurally according to Johnson (2015)

**GROUND TWO:**

RESERVED FOR FUTURE ISSUES

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

**(b) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: \_\_\_\_\_

### GROUND THREE: \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

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**(b) Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

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**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

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(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

\_\_\_\_\_

**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

\_\_\_\_\_

**(b) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

\_\_\_\_\_

**(c) Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_



(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

SENTENCE IN the excess AMOUNT Authorized. This ISSUE & CLAIM was not AVAILABLE until the recent decision IN The Supreme court's Precedent of Johnson V. United States 135 S.Ct. 2551 (2015) & Welch (2016)

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

N/A

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

ARCANGELO M. TUMINELLI & TERESA WHALEN

(c) At the trial:

!! SAME !!

(d) At sentencing:

!! SAME !!

(e) On appeal:

!! SAME !!

(f) In any post-conviction proceeding:

PRO SE & NLPA ASSISTING

(g) On appeal from any ruling against you in a post-conviction proceeding:

PRO SE & NLPA ASSISTING

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.\*

According to the Supreme COURT'S Recent decision IN Johnson, 135 S.Ct 2551 (2015) & Welch (2016) Appellant IS Timely within ONE-YEAR- OF the Precedents

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Revisit his sentence to  
Correct the career applications, Grant A Full hearing, Grant A counsel  
To Assist in any further Proceedings  
or any other relief to which movant may be entitled.

Pro'se

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion  
under 28 U.S.C. § 2255 was placed in the prison mailing system on July 13, 2016  
(month, date, year)

Executed (signed) on July 13, 2016 (date)

Solothal Thomas  
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

FILED ENTERED  
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JUL 21 2016

AT BALTIMORE  
CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
BY DEPUTY

July 13, 2016

To: UNITED STATES DISTRICT  
COURT CLERK, FOR BALTIMORE MARYLAND

Yes I would like have a copy of this Petition, Also Filed with  
A File-stamp, And have A copy Forwarded back to me.. And  
I Also would like this Petition Filed IN PLACE OF My Petition  
That the UNITED STATES COURT OF APPEALS FOR the FOURTH  
CIRCUIT Forward to this Court with A NOTICE OF  
AUTHORIZATION GRANTING ME AUTHORIZATION TO ~~FOR~~ File  
THIS MOTION.. # 16-9743 - 1:04-cr-00232-CCB-1 ..

THANK YOU

SOLOTHAL THOMAS